(2002) 08 DEL CK 0285

In the Delhi High Court

Case No : CW 1200 of 1983

Process Syndicate APPELLANT

Vs

Central Board of Trustee RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14B

Citation : (2002) 99 DLT 625 : (2002) 95 FLR 981 : (2002) 3 LLJ 856

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : D.N. Vohra, for the Appellant; R.C. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, J.—The short question involves in this writ petition is that as to whether the impugned order is a speaking order for the purpose of assessing damages u/s 14B of The Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "Act") by the Regional Provident Fund Commissioner.

2. Mr. D.N. Vohra has contended that the impugned order, inter alia, states that the end of justice would be met if damages are levied in terms of the enclosed statement. That order cannot be termed as a speaking order for assessing damages as no basis for agreeing to the rates as levied and mentioned in the statement has been given by the Regional Provident Fund Commissioner. To support of his contentions, learned counsel for the petitioner has cited Organo Chemical Industries and Anr. v. Union of India and Ors. 1979 L I.C. 1261. Mr. Vohra has further contended that as per the Scheme mentioned in Section 32-A of the Act rate of damages and percentage thereof has been provided although from the statement which has been taken into consideration by the Regional Provident Fund Commissioner, no basis has been adverted to and, Therefore, the order becomes non-speaking, arbitrary and without basis.

3. On the other hand, Mr. R.C. Chawla, learned counsel appearing for the respondent has contended that the impugned order is a speaking order as would be evident from the order if read as a whole. He has further contended that levy of damages could be 100% of the amount of default in terms of Section 14B of the Act. He has contended that this question is no more rest integra in view of the authority of the Supreme Court as well of this Court and he has cited M/s Birla Cotton Spinning & Weaving Mills Ltd. v. Union of India and Ors. (1984) 2 Del 60.

4. I have given my careful consideration to the arguments advanced by the learned counsel appearing for both the parties. The provisions of Act as well as of the Scheme have been indicated for the benefit of the workers and it must bear a beneficial construction. In Birla Cotton Spinning & Weaving Mills Ltd.''s case (supra) the Division Bench of this Court held that :

".....It is correct that in imposing damages broadly the slab given in the table have been made the basis. But there is no mechanically about it. Mind has been applied to each case. In many cases though proposed damages were indicated 100 per cent of arrears but after the hearing the same have been reduced to 25 per cent. . . . . "

5. Quoting from Associated Journals Ltd. v. the RPFC. CWP 362/1978 Their Lordships of the Division Bench further observed that :-

"No doubt in some other cases the proposed damages and the ultimate damages imposed are the same. But from this it does not follow that there has been no application, of mind. Simply because the broad parameters have been laid down for the imposition of damages does not mean that this is an inflexible rule....."

6. Although this observation was with regard to the Circular issued by the Central Provident Fund Commissioner. It also holds good in the case in hand. The Regional Provident Fund Commissioner decided the matter, applied his mind and that is why he had observed that it would be too harsh to levy damages equal to the amount in arrears as provided u/s 14B of the Act and after seeing the statement agreed with the levy of rates and the percentage which has been imposed by the Provident Fund authorities. I have perused the Scheme as provided in paragraph 32A of the Scheme. The highest percentage is 37% though rate of damages for a default of more than 6 months and above whereas rate of percentage for six months and above in the present case the authorities have fixed 55% but after perusing the table it is clear that though the Provident Fund authorities could have imposed rate of 17% for a period of less than two months, yet in the instant case they have imposed 2% for the said period. Taking all these factors into consideration the impugned order cannot be termed as a non-speaking order or order passed mechanically. I do not see any fault with the impugned order. The case of Organo Chemical Industries and Anr. (supra) cited by Mr. Vohra does not support the case of the petitioner.

7. I do not see any infirmity with the impugned order. Writ petition, Therefore,

stands dismissed with no order as to costs.

